UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/794
21 November 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 794

Case No. 879: MUSEIBES

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry, Vice-President; Mr. Francis Spain;

Whereas, on 25 September 1995, Hasan Mohd Museibes, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application requesting the Tribunal, inter alia, to:

"...

(a) Ask the Respondent to provide the Tribunal with the whole file of my fourth appeal of 22 November 1993, ...

...

(c) Reappoint me [to] my former post of Area Welfare Officer or an equivalent post, ...

(d) Issue a testimonial certificate acknowledging my dedication, achievements and donations when I was AWO [Area Welfare Officer], change the Certificate of Service accordingly, issue and distribute fieldwide a letter of apology to rehabilitate my reputation, ...

(e) Compensate me for the period of separation from work as from 2 October 1993 up till now, according to the last reclassification of Welfare Officers at grade 11 and be given a cheque payable in US dollars ...

(f) Compensate me for the immense financial harm, i.e. withholding my annual increment and transferring me from area to area and from post to another lower post and not allowing me to participate in any training course ...

(g) Compensate me for the immeasurable moral and psychosomatic harm, ...

(h) [Award of legal costs],

(i) Pay me the total of 50,000 US dollars or [the amount] the Tribunal deems proper."

Whereas the Respondent filed his answer on 22 April 1996;

Whereas the Applicant filed written observations on 12 June 1996;

Whereas the Applicant submitted additional written observations on 18 October 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 2 May 1987, as an Area Welfare Officer B, in the Aleppo/Lattakia Area of Syria, at the grade 7, step 1 level, on a temporary indefinite appointment. With effect from 1 August 1990, the Applicant was transferred to the post of Area Welfare Officer, Central (Homs) Area, and with effect from 4 May 1991, to the post of Clerk B, in the Relief and Social Services Department in the Field Office, Damascus, with protected grade and salary. With effect from 1 February 1992, the Applicant was transferred back to the Aleppo Area as an Elementary Teacher, at grade 7. The Applicant resigned, with effect from 1 October 1993.

On 23 April 1991, the Director of UNRWA Affairs (DUA), Syrian Arab Republic (SAR), recorded a decision taken at a meeting between him and the Field Relief and Social Service Officer, to transfer the

Applicant to a G-6 post with grade protection in the Damascus Field Office. In a letter dated 25 April 1991, the Acting Field Administration Officer, SAR, informed the Applicant "the Director has decided to transfer you as from 4 May 1991 from your present post ... to the post of clerk B in the Registration and Eligibility Office with protected grade and salary."

On 2 May 1991, the Applicant requested the DUA to reconsider this decision.

In a letter dated 13 May 1991, the DUA informed the Applicant that his transfer was "the result of an ad hoc investigation" and that he considered it to be "in the interest of the Agency." On 30 May 1991, the Director of Personnel informed the Applicant, on behalf of the Commissioner-General, that "the decision taken by the Field Director is justified and should stand." He offered "to terminate your services in the interests of the Agency" and outlined the entitlements that would consequently accrue to the Applicant.

On 9 June 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

A draft JAB report was completed on 8 November 1991, but was not sent to the Applicant. However, on 21 November 1991, the Secretary of the JAB, UNRWA, informed the Applicant that the chairman of the Panel constituted to hear the Applicant's case had resigned and that a new panel would be constituted. In response to a communication from the JAB dated 6 December 1991, in which the JAB recommended the waiver of applicable time limits, the Officer-in-Charge, UNRWA Headquarters, recommended to the Chairman of the JAB, on 10 January 1992, that:

> "(a) [The Applicant] should be transferred back to Aleppo to the temporary post of Elementary Teacher at grade 7, with priority to be offered the first vacant post that comes up in that area (as an English Teacher, preparatory cycle, at grade 9);

(b) A payment ex gratia of LS 25,000 should be made to [the Applicant] towards any excessive out-of-pocket expenses he may have incurred over and above those which would normally apply in the case of transfers."

On the same date, the Officer-in-Charge, UNRWA Headquarters, transmitted to the Applicant a copy of his communication to the JAB referred to above.

On 14 April 1993, the JAB adopted its report. It recommended that the appeal be dismissed and that "the Administration's decision be upheld with a view to ascertaining that the ex-gratia payment of LS 25,000.00 was adequate and the post offer is properly followed up to finalize reconciling the status of the Appellant under applicable Area Staff Rules and Regulations."

On 13 May 1993, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him, inter alia:

"... I accept the recommendation and your appeal, therefore, stands dismissed.

... Finally, the Board has recommended that the question of a post to be offered to you be properly followed up. I will, accordingly, ask the Director of UNRWA Affairs in the Syrian Arab Republic to look into this and advise you of the results in due course."

On 1 September 1993, the Applicant submitted a letter of resignation to the DUA, SAR. The latter accepted the Applicant's resignation on 23 September 1993. He noted that the Applicant's employment would end on 30 September 1993.

On 22 November 1993, the Applicant lodged a further appeal with the JAB. Its findings, evaluation and recommendation read as follows:

"A. The Appellant's objection to the failure of the Field Office Director to answer his letter of resignation dated 1 September 1993 and his letter of protest dated 21 October 1993:

The Board is of the opinion that this does not constitute grounds of appeal under Area staff regulation 11.1(A).

B. The Appellant's objection to the violation of the decisions of the Officer-in-Charge, Headquarters, Vienna by refusing to appoint him to the first vacant post of English Teacher, preparatory cycle, that came in Lattakia sub-Area:

The Board, after a thorough study of the Appellant's file, noted the following:

(1) The decision of the Officer-in-charge, Headquarters, Vienna, as conveyed in his letter dated 10 January 1992 to the Appellant, that the Appellant 'should be transferred back to Aleppo to the temporary post of Elementary Teacher at grade 07, with priority to be offered the first vacant post that comes up in that area (as an English Teacher, preparatory cycle, at grade 09)'

(2) The Appellant continued to serve as Elementary Teacher, grade 07 until September 1993 when he submitted his resignation.

(3) The Appellant alleges that he submitted his resignation under duress and due to the fact that he was unfairly treated by the Administration. The Appellant submits that a vacant post of English Teacher, Preparatory Cycle was advertised in Lattakia sub-Area. He also contends that he submitted his resignation after he was verbally informed by the Area Education Officer and Field Education Officer that his application to the said post was rejected.

(4) In its reply to the appeal, the Administration contends that the post [of] English Teacher was only established on 1 September 1993, the date of the Appellant's resignation and that 'as of 1 August 1993, Lattakia was no longer included with Aleppo in the North Area, but instead was attached to the Central Area.'

(5) In this contest, and based on the decision of the OIC [Officer-in-Charge], HQ [Headquarters] Vienna, the Board is of the opinion that the Appellant should have been given priority to be offered transfer to the first vacant post of English Teacher, Preparatory Cycle, particularly the one that arose in Lattakia Area as:

(a) Lattakia was included with Aleppo Area at the time when the OIC, HQ made his decision, and

(b) The Appellant expressed his desire to take that post by applying for it.

C. The disregard of the Appellant's attendance at work on 1 and 2 October 1993:

The Board here noted the Administration's contention that 'the Appellant was paid for attending at his former place of duty on Saturday, 2 October 1993, notwithstanding that he had resigned effective close of business two days previously on Thursday, 30 September 1993. He was not paid for Friday, 1 October 1993 because that was not a working day, and he had resigned the day before.'

No evidence has been adduced by the Appellant to the contrary of this statement and, therefore, the Board rejects this part of the Appellant's claim.

D. The Appellant's allegation of obstruction and delay, in contravention of paragraph 9 of Area staff rule 111.3, of his second appeal of 7 December 1992 (should be 22 November 1992), and third appeal of 15 April 1993:

The Board here notes that the Appellant's second and third appeals have already been considered by a previous Joint Appeals Board on 12 July 1994. The said Board submitted its recommendations at the time to the Commissioner-General who in turn made his final decisions upon them. The decisions of the Commissioner-General were communicated to the Appellant on 2 and 9 August 1994 respectively.

IV. RECOMMENDATION

16. In view of the foregoing, the Board unanimously makes its recommendation that the Administration complies with the decision of the Officer-in-Charge, HQ., Vienna of 10 January

1992, with a view to reinstating the Appellant in the Agency's service in the post of English Teacher, Preparatory Cycle, grade 09, or any other equivalent post where the Appellant's qualifications are commensurate."

On 14 August 1995, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"I refer to the enclosed copy of the report of the Joint Appeals Board on your case, submitted to me under cover of a memorandum from the Chairman, dated 14 July 1995. You will note that the Board has concluded that you should have been offered a transfer to the post of English Teacher, grade 9, in Latakia, effective 1 September 1993. The Board has also recommended that all your other claims be dismissed.

I have carefully reviewed the Board's report. Regarding your contention that you should have been offered a teaching post in Latakia, Latakia was not a part of the same area as Aleppo on 1 September 1993; therefore, the Board's conclusion that the Appellant should have been offered the Latakia post is not well founded. However, in order to bring this matter to a conclusion and in the interest of finality, I have decided to offer you the equivalent of two years' salary at the rate in effect when you resigned in full and final settlement of all the claims you have raised in this appeal. You will be contacted by the Administration regarding the steps necessary to accept this offer."

On 25 September 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent wilfully failed to appoint the Applicant to the post of English Teacher, as required by the letter dated 10 January 1992, from the Officer-in-Charge, Headquarters.

2. The Respondent effected the Applicant's termination for extraneous and improper motives.

Whereas the Respondent's principal contentions are:

1. There were no vacant posts for an English Teacher during the period 10 January 1992 until the Applicant resigned on 1 September 1995.

2. The Applicant is seeking a rehearing of his previous applications to the Tribunal, and relief based on the factual matters raised in those applications. Such matters are res judicata.

The Tribunal, having deliberated from 23 October to 21 November 1996, now pronounces the following judgement:

I. On 25 April 1991, the Acting Field Officer, Syrian Arab Republic (SAR), conveyed to the Applicant the decision of the Field Office Director to transfer the Applicant from his post as Area Welfare Officer in the Central Area to the post of Clerk "B", Registration and Eligibility Officer, with protected grade and salary, with effect from 4 May 1991. The Applicant appealed the decision to transfer him. On 10 January 1992, before the Commissioner-General had made a decision on the Applicant's appeal, the Applicant was informed by the Officer-in-Charge, Headquarters (Vienna), of the decision to transfer him back to Aleppo, to the temporary post of elementary Teacher at grade 7. He was to be offered priority for the first vacant post as an English Teacher, preparatory cycle, at grade 9, that would become available .

II. Subsequently, on 13 May 1993, the Commissioner-General informed the Applicant that, on the recommendation of the Joint Appeals Board (JAB), he had dismissed the appeal. He asked the Director of UNRWA Affairs, SAR, to look into the question of a post

to be offered to the Applicant. On 22 May 1993, the Applicant applied for a transfer to any vacant position as an English Teacher in a preparatory school in Aleppo.

III. However, in a series of letters, beginning on 1st September 1993, the Applicant submitted his resignation, with effect from 30 September 1993. The import of the Applicant's letters was that, because of the animosity he perceived towards him on the part of the Administration, he could not continue to work, and he awaited a decision of the United Nations Administrative Tribunal. On 21 October 1993, the Applicant, in a further letter, complained of a lack of detailed response to his letter of 1 September 1993, and of the failure of the Agency to appoint him to the vacant post of English Teacher in Latakia.

IV. In its report of 31 May 1995, the JAB concluded that the Applicant should have been offered the transfer to the post in Latakia and recommended his reinstatement. The Commissioner-General decided that, as Latakia was not part of the same area as Aleppo when the post was created, the recommendation of the JAB was not well-founded. However, in the interests of finality, he offered "the equivalent of two years' salary, at the rate in effect when [the Applicant] resigned, in full and final settlement of all the claims raised in [the] appeal."

V. The Respondent states that, from 10 January 1992 until the date of the Applicant's notice of resignation of 1 September 1993, there was no vacant post as an English Teacher, preparatory cycle, at Grade 9, in the relevant area. Up to 1 August 1993, Latakia and Aleppo were in the Agency's North Area in SAR. From that date, Latakia was no longer included with Aleppo in the North Area, but, instead, was attached to the Central Area.

VI. In the Tribunal's view, as Latakia and Aleppo were in the North Area at the time that the Officer-in-Charge made his recommendation, priority should have been given to the Applicant for any vacancy that arose in that area. A change effected in the designation of the area, subsequent to the recommendation of the Officer-in-Charge, should not have precluded such priority. Nor should the coincidence of the creation of such a post, on the very day of the Applicant's letter of resignation, in any way negate the recommendation of the Officer-in-Charge.

VII. The Tribunal has considered the other matters raised by the Applicant, i.e., failure of the Administration to respond to the Applicant's correspondence, failure of the Administration to pay the Applicant for working on 1 and 2 October 1993 and delaying the procedures of the Applicant's second and third appeals to the JAB. The Tribunal accepts the Respondent's arguments with respect to these matters. Following the recommendation of the JAB, that the Applicant be given priority for a post as Teacher of English, preparatory cycle, grade 9, the Commissioner-General offered to pay to the Applicant the equivalent of two years' salary at the rate in effect on the date when the Applicant resigned, in full and final settlement of all claims raised in the appeal. The Respondent is willing to pay the amount in Syrian pounds at the exchange rate in effect on 30 September 1993.

VIII. In view of the Tribunal's determination in regard to the conclusion of the Officer-in-Charge, Headquarters, dated 10 January 1992, the Tribunal orders that:

(i) The Applicant be offered priority for the first relevant vacant post to come up in the North Area, SAR, which includes both Aleppo and Latakia.

(ii) In the alternative, the Applicant be paid the equivalent of six months of his net base salary at the rate in effect on the

date of his resignation, in addition to the two years' net base salary offered to him by the Respondent, the amounts to be paid in Syrian pounds, at the exchange rate in effect on 30 September 1993.

IX. The Tribunal makes no further order.

(Signatures)

Samar SEN
President

Hubert THIERRY
Vice-President

Francis SPAIN
Member

New York, 21 November 1996

R. Maria VICIEN-MILBURN
Executive Secretary